IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

INCOME TAX APPLICATION NO. 171 OF 1995.

The Commissioner of Income tax,
Bombay City VI. .. Petitioner.
V/s.
Bush India Ltd. .. Respondents.

Mr. Ashok Kotangale for the petitioner.

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.

DATED : 13.6 .2006.

P.C. :

. Heard learned Counsel for the petitioner.

None for the respondents inspite of service.

. In this application following substantial question of law was framed:

> . Whether onthe facts and in the circumstances of the case, the Tribunal was right in law in holding that passing of an order by Commissioner of Income-tax (Appeals) results in total merger of the Income-tax Officer's order with the Commissioner of Income-tax (Appeals)'s order which thereby ousts jurisdiction of the Commissioner of Income-tax in exercising his power u/s 263 even in respect of the issues which were not the subject matter of appeal before the Commissioner of Income-tax (Appeals)?"

. Learned Counsel appearing for the Revenue submits that in view of the law laid down by the Apex Court in the case of CIT vs Shri Arbuda Mills Ltd. reported in 231 ITR 59 (SC) and in the case of CIT vs Ratilal Bacharilal & Sons reported in (2006)

153 TAXMAN 86 (Bom.) the present application is liable to be allowed and it is necessary to direct the Tribunal to refer the substantial question of law framed as above.

. In the result, application is allowed. The Tribunal is directed to refer the above question to this Court for opinion after stating the facts of the case in question. No order as to costs.

(V.C.DAGA,J.)

(J.P.DEVADHAR,J.)